



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: OMURA, Yoshiharu

SERIAL NO.: 10/038,278

ART UNIT: 3727

FILED: January 4, 2002

EXAMINER: SMALLEY, J.N.

TITLE: CAN HAVING A COVER WITH A STAY-ON TAB

REMARKS ON AMENDMENT "C"

Director of the U.S. Patent
and Trademark Office
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Sir:

In response to the Official Action of August 29, 2003, a response being due by December 1, 2003, please consider the following remarks in conjunction with the amendments to the above-identified application as follows:

REMARKS

Upon entry of the present amendments, previous Claims 11 - 14 have been canceled and new Claim 15 substituted therefor. Reconsideration of the rejections, in light of the foregoing amendments and present remarks, is respectfully requested. The present amendments have been entered for the purpose of distinguishing the present invention from the prior art combination and for the purpose of placing the application into a better condition for allowance.

In the Office Action, it was indicated that Claim 11 was rejected under 35 U.S.C. §103 as being unpatentable over the Kyo '862 patent in view of the Bozek patent. The Bozek patent was simply recited for purpose of showing wrinkles extending in generally parallel relationship to each

other. Claim 12 was rejected under 35 U.S.C. § 103(a) as being obvious over the Kyo patent in view of the Bozek patent and further in view of the Perry patent. Claims 13 and 14 were rejected as being obvious over the Kyo patent in view of the Bozek patent, and further in view of the Cudzik patent. The Examiner has also had minor objections with respect to the formalities of the claims. In particular, independent Claim 11 was objected to because of various language informalities. Claim 13 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

As an overview to the present reply, Applicant has extensively amended the language of previous Claims 11 - 14 in the form of new independent Claim 15. New independent Claim 15 expresses all of the limitations contained in previous Claims 11 - 14, along with the language that the "wrinkles are connected together in a radius direction across the upper surface" of the can cover. In particular, these feature is distinguishable from the prior art combination.

Fundamentally, Applicant contends that each of the elements of new independent Claim 15 (but for the above limitation) are shown as separate components of each of the prior art references. However, Applicant respectfully contends that there is no motivation or teaching in any of these prior art references to suggest such a combination. The extensive array of elemental limitations contained in new independent Claim 15 presents a picture claim of the present invention. Applicant respectfully contends that is only with hindsight analysis that all of such limitations recited in independent Claim 15 would ever be "obvious" to one of ordinary skill in the art. Applicant's attorney respectfully contends that the Examiner has picked and choosed throughout the variety prior art references to show various components of the can cover of the present invention without relying upon any teachings as to why such elements should be combined. Applicant believes that the wide variety of limitations contained in independent Claim 15 should patentably distinguish the present invention from

any single reference and patentably distinguish the present invention from any combination of prior art references. There is certainly no teaching or motivation whereby one would pick and choose each of the features of the prior art references so as to show the present invention, as claimed in independent Claim 15.

Specifically, with respect to the prior art references, Applicant notes that the wrinkle/groove formations 41 and 42 in the Bozek patent do not have the effect of preventing upward swelling of the can cover by the expansion of the contents of the can. The reason for this lack of ability to prevent upward swelling is because the wrinkle/groove formations 41 and 42 are formed concentrically. These wrinkles and grooves are not connected together in the radius direction across the can cover. In contrast, each of the wrinkles and grooves associated with the present invention are connected together in end-to-end relationship in the radius direction of the can cover. As a result, the present invention effectively prevents the upward swelling of the can cover. In order to accomplish the prevention of upwardly swelling, it is essential that the wrinkles be formed across the can cover in the radius direction. Applicant has added such a limitation in independent Claim 15 in an effort to further distinguish the present invention from the prior art references.

The present invention offers advantages not shown nor suggested by the prior art combination. It is fundamental that the prior art combination does not prevent the upward swelling of the can cover brought about by the expansion of contents of the can. If the can cover should swell upwardly by the expansion of the contents of the can, then it is possible that the stay-on tab may be caught by an exterior object, be bent or otherwise be dislodged out of position. By preventing the upward swelling of the can cover, the present invention avoids this possibility and, hence, achieves advantages that are neither shown nor suggested by the prior art combination.

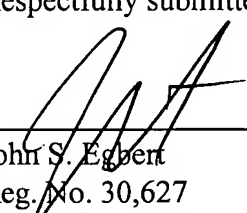


Based upon the foregoing analysis, Applicant contends that independent Claim 15 is now in proper condition for allowance. Reconsideration of the rejections and allowance of the present claims at an early date is earnestly solicited. Since no new claims have been added above those originally paid for, no additional fee is required.

Respectfully submitted,

Date

12.1.03



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